

## Message Text

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SUBJECT: CHANCERY DEVELOPMENTS

FOR: BURMAN, ADMIN SECTION TDY FROM LINDA SHENWICK

SUMMARY: WILKES AND ARTIS HAS SUBMITTED SUMMARY OF RECENT ACTIONS ON LOCATION OF CHANCERIES IN D.C. AND RECOMMENDATIONS FOR DEPARTMENT ACTIONS. REQUEST BURMAN RESPONSE ASAP. (ATTACHMENTS REFERRED TO IN MEMORANDUM QUOTED BELOW BEING SENT SPETELS.)

"ZONING COMMISSION ACTION AND SCHEDULE OF IMPLEMENTATION.

AT THE ZONING COMMISSION PUBLIC MEETING ON JULY 13, 1978, THE ZONING COMMISSION ADOPTED AMENDMENTS TO THE ZONING REGULATIONS THAT BOTH INCREASE AND DECREASE THE RIGHT OF CHANCERIES AND FOREIGN MISSIONS TO LOCATE IN THE DISTRICT OF COLUMBIA. THE ZONING COMMISSION ACTED ON THE UNCLASSIFIED

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BASIS OF A JULY 7, 1978 DRAFT TEXT AMENDMENT AND PREVIOUSLY SUBMITTED PROPOSED MAPS BY THE MUNICIPAL PLANNING OFFICE. ATTACHED AS EXHIBIT A IS THE MUNICIPAL PLANNING OFFICE DRAFT THAT WAS ACTED UPON BY THE ZONING COMMISSION AND MODIFIED AS HEREINAFTER DESCRIBED. IN BRIEF, THE ZONING COMMISSION ADOPTED A NEW ZONING DISTRICT FOR THE DISTRICT

OF COLUMBIA DESIGNATED A "D" ZONE WHICH WOULD PERMIT CHANCERIES TO LOCATE IN AREAS WHICH, FOR THE MOST PART, HAVE BEEN ZONED IN THE LOWER DENSITY RESIDENTIAL CLASSIFI-

CATIONS BUT WHICH ALSO HAVE A CHARACTER APPROPRIATE FOR A NEW CHANCERY. IN THE D ZONE, CHANCERIES WOULD BE PERMITTED BY BOARD OF ZONING ADJUSTMENT REVIEW. THE ZONING COMMISSION, HOWEVER, AMENDED THE ZONING TEXT TO PRECLUDE CHANCERIES IN THE C-1 ZONE WHERE THEY HERETOFORE HAVE BEEN PERMITTED AND TO REQUIRE BOARD OF ZONING ADJUSTMENT APPROVAL IN THE C-2-A, WHERE HERETOFORE THEY WERE PERMITTED AS A MATTER OF RIGHT. THE D ZONE WAS MAPPED IN AREAS WHERE CHANCERIES WERE DEEMED APPROPRIATE BY THE NATIONAL CAPITAL PLANNING COMMISSION FOREIGN MISSION AND INTERNATIONAL AGENCY ELEMENT OF THE COMPREHENSIVE PLAN, WHICH INCLUDES SUCH AREAS AS MASSACHUSETTS AVENUE (SO-CALLED "EMBASSY ROW" AREA) AND 16TH STREET. THIS MAP HAS PREVIOUSLY BEEN SUBMITTED TO STATE. THE B.Z.A. REVIEW CRITERIA AS ADOPTED BY THE ZONING COMMISSION FOR USE IN ALL ZONES WHERE B.Z.A. APPROVAL IS REQUIRED SUBSTANTIALLY BROADENS THE DISCRETION OF THE BOARD OF ZONING ADJUSTMENT TO GRANT OR DENY AN APPLICATION. INTERNATIONAL AGENCIES, EXCEPT FOR RESIDENTIAL ZONES AND THE D ZONE, WOULD BE TREATED IN ESSENTIALLY THE SAME MANNER AS CHANCERIES.

"A. ZONING DISTRICTS IN WHICH CHANCERIES ARE PERMITTED UNDER ACTION BY ZONING COMMISSION.

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1. CHANCERIES WOULD BE PRECLUDED FROM BEING ESTABLISHED IN THE C-1 ZONING CLASSIFICATION AND ALSO IN THE R-1, R-2, R-3, R-4, R-5-A AND R-5-B CATEGORIES WHERE THE D ZONE IS NOT MAPPED.

2. CHANCERIES WOULD BE PERMITTED WITH BOARD OF ZONING ADJUSTMENT APPROVAL IN THE D ZONE, C-2-A ZONE, R-5-C AND R-5-D ZONES AND S-P ZONE.

3. CHANCERIES WILL BE PERMITTED AS A MATTER OF RIGHT IN THE C-2-B, C-3-A, C-3-B, C-4, C-M-1, C-M-2, C-M-3, M, W ZONES (W-1, W-2, W-3), C-R, AND C-5 ZONES (ESSENTIALLY THE PENNSYLVANIA AVENUE DEVELOPMENT AREA).

"B. BOARD OF ZONING ADJUSTMENT REVIEW STANDARDS AND CRITERIA

IN ADDITION TO MODIFYING THE PROPOSED TEXT SET FORTH IN EXHIBIT A AS TO THE APPLICABLE ZONING DISTRICTS, THE ZONING COMMISSION ADOPTED THE CRITERIA GENERALLY AS SET FORTH IN SECTION 4603.1 AND SECTION 4603.2 OF EXHIBIT A. THE LANGUAGE ADOPTED REGARDING THE REQUIREMENT THAT "THE

PROPOSED USE AND THE BUILDING IN WHICH THE USE IS TO BE LOCATED ARE COMPATIBLE WITH PRESENT AND PROPOSED DEVELOPMENT OF THE NEIGHBORHOOD" IS LANGUAGE DIRECTLY FROM THE CHANCERY ACT OF 1964. THIS GIVES THE BOARD OF ZONING

ADJUSTMENT THE RIGHT IN ANY OF THE REVIEW ZONES (D, C-2-A, R-5-C, R-5-D AND S-P) TO DENY THE LOCATION OF A CHANCERY THEREIN IF IT SHOULD FIND THAT THE STANDARDS ARE NOT MET. ADDITIONALLY, THE ZONING COMMISSION INSTRUCTED THE MUNICIPAL PLANNING OFFICE TO REWRITE THE CRITERIA IN SUCH A MANNER AS TO INSURE THAT THE BOARD OF ZONING ADJUSTMENT HAS THE RIGHT TO IMPOSE CONDITIONS WHICH RELATE TO THE CRITERIA AND THE COMMENTS OF THE DEPARTMENTS OR AGENCIES MADE UNDER UNCLASSIFIED

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SECTION 4604.1 AND SECTION 4604.2.

"C. IN ADDITION TO THE MODIFICATIONS OF EXHIBIT A DESCRIBED ABOVE, THE ZONING COMMISSION DIRECTED THE MUNICIPAL PLANNING OFFICE TO RESTRUCTURE THE PROPOSED TEXT SO AS TO PROVIDE A SECTION IN EACH OF THE APPLICABLE ZONING DISTRICTS THAT WOULD SPECIFICALLY LIST THE REQUIREMENTS FOR CHANCERY LOCATION WITH CROSS-REFERENCES TO OTHER SECTIONS. THE ZONING COMMISSION ALSO INSTRUCTED THE MUNICIPAL PLANNING OFFICE STAFF TO INCLUDE THE DEFINITIONS OF "HISTORIC DISTRICT" AND "HISTORIC LANDMARK" AS PROPOSED BY THE NATIONAL CAPITAL PLANNING COMMISSION.

"D. INTERNATIONAL AGENCIES

WITH REGARD TO INTERNATIONAL AGENCIES, THE ZONING COMMISSION ADOPTED LANGUAGE WHICH WILL PRECLUDE INTERNATIONAL AGENCIES FROM LOCATING IN A C-1 ZONE BUT WOULD PERMIT INTERNATIONAL AGENCIES IN THE S-P AND C-2-A ZONES WITH BOARD OF ZONING ADJUSTMENT APPROVAL UNDER THE CRITERIA OF SECTIONS 4603 AND 4604 OF THE AMENDMENTS, WHICH ARE THE SAME AS FOR CHANCERIES.

"E. SCHEDULE

UNDER THE HOME RULE ACT, THE ZONING COMMISSION MUST REFER ITS PROPOSED ADOPTED TEXT AND MAPS TO THE NCPC FOR CONSIDERATION AS TO IMPACT ON THE FEDERAL INTERESTS. BEN GILBERT, DIRECTOR, MUNICIPAL PLANNING OFFICE, HAS INDICATED THAT THE REVISED TEXT AS DIRECTED BY THE ZONING COMMISSION WOULD BE PREPARED IN WITHIN 10 DAYS AND INDICATES THAT HE BELIEVES THE ZONING COMMISSION WILL APPROVE THAT TEXT WITHIN THE SAME PERIOD. AT THAT TIME, THE UNCLASSIFIED

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AMENDMENTS WOULD BE REFERRED TO THE NCPC FOR THEIR REVIEW. THE FIRST AVAILABLE DATE FOR ACTION BY THE PLANNING COMMISSION WOULD BE AUGUST 3, 1978, WHICH COULD PERMIT, IF FINAL ACTION WERE TAKEN BY NCPC, FINAL ZONING COMMISSION

ACTION ON AUGUST 10. THE NEXT DATE FOR CONSIDERATION BY NCPC WOULD BE SEPTEMBER 7, 1978, WHICH WOULD THEN PERMIT A SEPTEMBER 14 DATE FOR FINAL ACTION BY THE ZONING COMMISSION. MR. GILBERT INDICATES THAT, IF APPLICATIONS FOR B.Z.A. APPROVAL WERE APPROPRIATELY PREPARED, HE WOULD INSURE THE ACCEPTANCE OF FILING BY THE BOARD OF ZONING ADJUSTMENT AFTER THE FIRST WEEK OF AUGUST, 1978. THUS, IF NCPC AND ZONING COMMISSION ACTED ON AUGUST 3 AND 10 AS DESCRIBED ABOVE, IT WOULD BE POSSIBLE TO HOLD A PUBLIC HEARING ON THE SAUDI ARABIAN APPLICATION ON EITHER SEPTEMBER 20 OR 27 (PROBABLY SEPTEMBER 27). IF THE SEPTEMBER DATES WERE FOLLOWED BY NCPC AND ZONING COMMISSION, THE EARLIEST DATE FOR THE B.Z.A. HEARING WOULD BE OCTOBER 18 OR OCTOBER 25. A BOARD OF ZONING ADJUSTMENT DECISION COULD BE EXPECTED IN THE FIRST WEEK OF THE MONTH FOLLOWING THE B.Z.A. HEARING.

"II. NCPC RESPONSE

NCPC STAFF, BY LETTER DATED JULY 12, 1978, A COPY OF WHICH IS ATTACHED AS EXHIBIT B, SUBMITTED COMMENTS ON THE PROPOSED TEXT. IN ESSENCE, ASIDE FROM DEFINITIONAL AND CLARIFICATION CHANGES, THE NPC COMMENTS REQUEST "MATTER OF RIGHT" TREATMENT IN THE D ZONE BUT SERIOUS CURTAILMENT IN THE LOCATION OF CHANCERIES IN THE COMMERCIAL ZONES. WHILE A MAP HAS NOT BEEN OBTAINED AT THIS WRITING TO DESCRIBE THE PROPOSED MAP AMENDMENT TO THE NCPC ELEMENT, THE UNDERSIGNED HAS SEEN THE MAP AND IT ESSENTIALLY RESTRICTS CHANCERY LOCATIONS IN COMMERCIAL ZONES TO UP-TOWN CENTERS, GEORGETOWN AND A FEW OTHER LIMITED AREAS. AFTER THE MEETING OF THE ZONING COMMISSION AND ACTION BY THE COMMISSION ON THAT DATE, STAFF REPRESENTATIVES OF NCPC UNCLASSIFIED

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APPEARED TO BE UPSET WITH THE FACT THAT THE ZONING COMMISSION DID NOT FOLLOW THE NCPC STAFF'S SUGGESTIONS.

"III. D.C. COUNCIL LEGISLATION

AT THE HEARING OF THE HOUSING AND URBAN DEVELOPMENT COMMITTEE OF THE D.C. COUNCIL ON JULY 12, 1978, THE COMMITTEE, OVER OBJECTION BY STATE DEPARTMENT AND AFTER THE STATE DEPARTMENT PRESENTATION, AMENDED THE SHACKLETON BILL TO PROVIDE AS SHOWN IN EXHIBIT C. CORPORATION COUNCIL, THROUGH A SUPPLEMENTAL MEMORANDUM DATED JULY 13, 1978, OPINED THAT THE COUNCIL "IS FORECLOSED FROM ENACTING BILL 2-291." A COPY OF THE CORPORATION COUNCIL OPINION IS ATTACHED AS EXHIBIT D. THE COMMITTEE HAS SET A FURTHER PROCEEDING ON THIS BILL FOR JULY 31, 1978.

"IV. DECISIONS BY DEPARTMENT OF STATE

ESSENTIALLY, IT IS RECOMMENDED THAT THE DEPARTMENT

OF STATE DETERMINE WHAT POSITION IT SHOULD TAKE IN THREE AREAS; NAMELY, (1) ON ZONING COMMISSION ACTION, (2) NCPC RESPONSE AND (3) D.C. COUNCIL PROPOSED LEGISLATION. A VERY BRIEF DISCUSSION FOLLOWS.

"A. THE STATE DEPARTMENT SHOULD DETERMINE WHETHER IT SHOULD ACCEPT THE ZONING COMMISSION AMENDMENTS OF JULY 13, 1978. MR. GILBERT HAS PROMISED THE UNDERSIGNED A COPY OF THE REDRAFTED TEXT AS SOON AS POSSIBLE. THERE APPEAR TO BE TWO PRINCIPAL AREAS OF CONCERN: ONE, THE DELETION OF THE C-1 ZONE SINCE, HERETOFORE, CHANCERIES HAVE BEEN PERMITTED IN THAT ZONE AND THE REQUIREMENT OF C-2-A B.Z.A. APPROVAL; AND, SECONDLY, THE CRITERIA THAT PLACES EXTREMELY BROAD DISCRETION IN THE BOARD OF ZONING ADJUSTMENT IN UNCLASSIFIED

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REVIEWING A B.Z.A. APPLICATION TO ESTABLISH A CHANCERY.

THE C-1 ZONE HAS GENERALLY BEEN REGARDED AS A NEIGHBORHOOD COMMERCIAL DISTRICT. WHILE GENERAL OFFICE USES ARE PERMITTED AND WILL CONTINUE TO BE PERMITTED, THERE MAY BE A RATIONAL BASIS FOR PROHIBITING CHANCERY USES AND INTERNATIONAL AGENCIES. ON THE OTHER HAND, THE C-2-A ZONE HAS BEEN RECOGNIZED AS A MEDIUM-DENSITY COMMUNITY BUSINESS OFFICE AND SHOPPING CENTER AREA. AT LEAST ONE MEMBER OF THE ZONING COMMISSION FELT STRONGLY THAT THERE MAY BE SOME AREAS OF C-2-A WHERE CHANCERIES SHOULD NOT BE PERMITTED. THE UNDERSIGNED WILL ENDEAVOR TO FIND OUT HOW MANY EXISTING CHANCERIES ARE IN THE C-1 AND C-2-A ZONES. (A CHECK WITH MR. HROMANIK AT NCPC INDICATES THAT NO MORE THAN A TOTAL OF APPROXIMATELY FIVE ARE IN BOTH ZONES.)

AS FOR THE STANDARDS FOR B.Z.A. REVIEW, THE STATE DEPARTMENT'S PREVIOUS POSITION HAS BEEN TO ACCEPT A LIMITED FORM OF B.Z.A. SITE PLAN REVIEW BUT TO PRECLUDE THE BOARD OF ZONING ADJUSTMENT FROM DENYING THE CHANCERY USE IN AN AREA THAT IS MAPPED FOR D CLASSIFICATION. AS A PRACTICAL MATTER, HOWEVER, THE UNDERSIGNED IS NOT AWARE OF ANY CHANCERY B.Z.A. APPLICATION IN AN R-5-C OR R-5-D ZONE WHERE THE SAME STANDARDS HAVE BEEN APPLIED THAT AN APPLICATION HAS BEEN DENIED BY THE BOARD. THE AMENDMENT ALSO CHANGES THE CRITERIA IN THE S-P ZONE PRIOR TO A RECENT EMERGENCY ORDER OF THE ZONING COMMISSION PERMITTED CHANCERIES AS A MATTER OF RIGHT IN BUILDINGS CONSTRUCTED PRIOR TO 1958. THE ZONING COMMISSION HAS NOT INDICATED WHETHER THE EMERGENCY ORDER WILL BE MADE PERMANENT OR, IF NOT, WHETHER CHANCERIES WILL CONTINUE TO BE PERMITTED IN SUC) BUILDINGS.

UNDER THIS SECTION DESCRIBING THE DETERMINATION THAT

SHOULD BE MADE, STATE SHOULD PROBABLY WEIGH THE GAIN OF

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THE D DISTRICTS AGAINST THE LOSS OF THE C-1 ZONE AND B.Z.A. REVIEW IN C-2-A ZONES.

"B. ESSENTIALLY, IT IS THE UNDERSIGNED'S UNDERSTANDING THAT THE NCPC POSITION ESPOUSED BY THE EXECUTIVE DIRECTOR'S STAFF AND CHAIRMAN OF THE PLANNING COMMISSION IS TO (1) STATE THAT THE ZONING COMMISSION ACTION IS INCONSISTENT WITH THE FEDERAL ELEMENT IN THAT IT DOES NOT PERMIT "AS A MATTER OF RIGHT" CHANCERIES IN THE D ZONE, AND (2) PERMITS CHANCERIES IN MORE EXTENSIVE COMMERCIAL AREA THAN DESIRED UNDER THE FEDERAL ELEMENT. THE ZONING COMMISSION AMENDMENTS HAVE ATTEMPTED TO COMPROMISE THE POSITION OF STATE, CITIZENS AND NCPC BY PERMITTING THE CHANCERIES IN A D ZONE WITH SITE PLAN REVIEW AND GREATER DISCRETION IN B.Z.A. AND TO ELIMINATE MUCH OF COMMERCIAL AREAS BY PROHIBITING CHANCERIES IN THE C-1 DISTRICT AND REQUIRING B.Z.A. APPROVAL IN THE C-2-A DISTRICT. IN THE EVENT NCPC WERE TO FIND THAT THE ZONING COMMISSION'S ACTION WERE INCONSISTENT WITH THE FEDERAL ELEMENT, SUCH A FINDING WOULD BE REFERRED BACK TO THE ZONING COMMISSION FOR ACTION. ULTIMATELY, IT IS THE ZONING COMMISSION'S DECISION AS TO WHAT ZONING IT WILL ADOPT AND IT IS ALSO THE ZONING COMMISSION'S DECISION AS TO WHETHER THE ZONING WHICH IT ADOPTS IS NOT INCONSISTENT WITH THE NATIONAL CAPITAL PLANNING COMMISSION FEDERAL ELEMENT. OBVIOUSLY, STATE MUST FIRST DETERMINE ITS POSITION IN ONE ABOVE BEFORE IT REACHES A DECISION AS TO HOW TO RESPOND TO NCPC STAFF AND COMMISSION MEMBERS.

"C. REGARDING THE D.C. COUNCIL LEGISLATION, I AM NOT ABLE TO PREDICT AT THIS TIME THE EFFECT OF CORPORATION COUNSEL'S RULING ON THE COMMITTEE OF THE COUNCIL PROPOSING THE BILL. HOWEVER, IT WOULD SEEM THAT, STRATEGICALLY, UNCLASSIFIED

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STATE SHOULD APPEAR TO BE RATHER RELUCTANT IN ACCEPTING THE ZONING COMMISSION'S DECISION, AT LEAST IN FRONT OF THE COUNCIL, TO INDICATE THAT THE ZONING COMMISSION HAS GONE A LONG WAY TOWARDS PROVIDING BY ZONING WHAT THE COUNCIL APPARENTLY DESIRES THROUGH LEGISLATION. THE BILL ITSELF (SEE, EXHIBIT C) IN MY VIEW DOES NOT EVEN CARRY OUT THE INTENTION OF THE DRAFTER (COUNCILMAN DAVID CLARKE). HOWEVER, OBVIOUSLY MR. CLARKE COULD REDRAFT THE BILL. PERHAPS PROTOCOL OFFICE SHOULD CONSIDER PERSONAL VISITS TO MEMBERS OF THE COUNCIL AS WELL AS SOME CONTACT WITH MEMBERS OF CONGRESS. CONGRESS, OF COURSE, HAS THE RIGHT TO VETO THE COUNCIL BILL." CHRISTOPHER

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